

These are the tentative rulings for civil law and motion matters set for Tuesday, March 3, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, March 2, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0061327 Citibank, N.A. vs. Olsen, Roy C.

Plaintiff's Motion for Order That Matters in Request for Admission of Truth of Facts be Admitted is denied. Neither the discovery at issue, nor the motion itself, were served on defendant at his correct address of record. The proof of service shows that service was made to defendant at 100 Van Horn Court, Sacramento. However the address of record as stated on defendant's answer is 10 Van Horn Court, Sacramento.

2. M-CV-0062585 Citibank, N.A. vs. Orth, Karen Ann

Appearance required. Plaintiff is advised that its notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Plaintiff's Motion for Judgment on the Pleadings is granted. The complaint states sufficient facts to constitute a cause of action against defendant, and defendant admits that all of the material allegations of the complaint are true. As the answer does not deny any of the material facts stated in the complaint, judgment on the pleadings is appropriate. Code Civ. Proc. § 438(c)(1)(A).

3. M-CV-0062911 Heldt, Donald R. vs. Alonzo, Julio et al

Appearance required on March 3, 2015 at 8:30 a.m. in Department 40.

4. S-CV-0030314 Belisle, David, et al vs. Centex Homes, et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be held at 8:30 a.m. in Department 42:

Cross-Defendants St. Paul Fire & Marine Insurance Company and Travelers Property Casualty Company of America's (St. Paul's) Demurrer to Centex's First Amended Cross-Complaint

Ruling on Request for Judicial Notice

St. Paul's request for judicial notice is denied.

Ruling on Demurrer

The demurrer is overruled. A party may demur to a cross-complaint where the pleading does not state facts sufficient to constitute a cause of action. (*Code of Civil Procedure section 430.10(e)*.) A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) St. Paul challenges the ninth cause of action for breach of contract and the tenth cause of action for breach of implied covenant of good faith and fair dealing. Upon review of the first amended cross-complaint and when reading the pleading as a whole, Centex has alleged sufficient facts in paragraphs 120 through 27 to support a breach of contract claim and in paragraphs 128 through 141 to allege a claim for breach of the implied covenant.

Any answer or general denial shall be filed and served on or before March 6, 2015.

Cross-Defendants St. Paul Fire & Marine Insurance Company and Travelers Property Casualty Company of America's (St. Paul's) Motion to Strike Portions of Centex's First Amended Cross-Complaint

The motion is granted in part. A party may file a motion to strike the whole pleading or a portion of a pleading. (*Code of Civil Procedure section 435(b)(1)*.) A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (*Code of Civil Procedure section 436(a), (b)*.) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (*Code of Civil Procedure section 437(a)*.) In the instant motion, St. Paul challenges language in the ninth and tenth causes of action that seek punitive damages. Centex concedes that the punitive damages allegations alleged in relation to the ninth cause of action for breach of contract are improper. In light of this, the motion is granted as to language found in paragraph 124, pp. 36-27 through 37:2 and paragraph 2 in the prayer related to the ninth cause of action on p. 24:43.

The remainder of St. Paul's request is denied. Punitive damages are available based upon sufficiently pled allegations of malice, oppression, or fraud. (*Code of Civil Procedure section*

3294.) The allegations must show a conscious disregard of the probable dangerous consequences of the defendant's conduct. (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896.) Conduct associated with punitive damages is often described as that which is " '...so vile, base, contemptible, miserable, wretched, or loathsome that it is looked down upon by ordinary decent people' " [Citations.]” (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.) Upon reviewing the first amended cross-complaint and reading the allegations as a whole, they sufficiently allege conduct falling within the purview of malice, oppression, and fraud to support punitive damages.

To reiterate, the motion is granted as to the language in paragraph 124, pp. 36-27 through 37:2 and paragraph 2 in the prayer related to the ninth cause of action on p. 24:43. This language is stricken without leave to amend. The remainder of the motion is denied.

5. S-CV-0032565 North Lakeshore, LLC vs. Turn-Key Construction Group, Inc.

The Motion for Order Determining Good Faith Settlement is continued to March 10, 2015 at 8:30 a.m. in Department 40.

6. S-CV-0032637 Boyett Const., Inc. vs. Allianz Global Risks U.S. Insurance

Allianz Global Risks US Insurance Company's (Allianz') Motion to Compel Attendance at Deposition and Production of Records is denied.

The Notice of Taking Deposition of Person(s) Most Qualified served by Allianz on December 31, 2014 identifies two general areas of inquiry. Within the first area of inquiry, McCarthy Building Companies, Inc. (McCarthy) is instructed to produce its most knowledgeable designee regarding (a) the specific construction industry organizations to which McCarthy and/or any of its employees was/were a member prior to April 15, 2011, and the dates of such membership, and (b) the specific construction industry organizations whose internet or other data McCarthy had access to prior to April 15, 2011. Allianz also demands that McCarthy produce any writings denoting construction industry organizations to which McCarthy and/or any of its employees was/were a member prior to April 15, 2011, including, but not limited to, documentation evidencing payment of dues, annual fees and/or subscriptions to each organization between January 1, 2009 and April 15, 2011.

The first area of inquiry is unreasonably overbroad and burdensome. Allianz claims that such information is crucial to McCarthy's failure to warn theory, and Allianz' "sophisticated user" defense. Thus because McCarthy claims that it was not reasonably warned by its material supplier that the subject plaster product contained "remarkably high levels" of chlorides which would rust and/or corrode the metal embedded in the concrete block detention cell walls of the project, Allianz argues that it is entitled to know all industry information to which McCarthy had access concerning the effect of high levels of chlorides on metals. As noted by McCarthy, its company consists of 14 offices in 8 states with nearly 2,000 employees. Allianz fails to demonstrate how membership in any "construction industry organization" at any time prior to April 15, 2011 by any employee of McCarthy is reasonably probative to the issue of whether it knew or should have known that PlasterMax contained high levels of chlorides, which would

rust or corrode metal in the cell walls. As phrased, the first area of inquiry constitutes an improper fishing expedition which is unreasonably burdensome on McCarthy, and not reasonably tailored to the issues in this litigation. See *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 224-225.

Within the second area of inquiry, McCarthy is instructed to produce its most knowledgeable designee regarding the use and/or limitations on use of chloride containing materials in the construction industry as such corporate knowledge existed prior to April 15, 2011, including (a) writings relating to such information available to McCarthy prior to April 15, 2011, (b) writings relating to such information in the possession of McCarthy prior to April 15, 2011, and (c) oral information relating to the use and/or limitations on use of chloride containing materials in the construction industry prior to April 15, 2011. Allianz also demands that McCarthy produce any writings (whether physical, electronic, or otherwise available through other industry organizations or otherwise) relating to the use and/or limitations on use of chloride containing materials in the construction industry, either in McCarthy's possession or simply "available" to McCarthy, and any writings relating to communications between McCarthy and others prior to April 15, 2011 relating to the use and/or limitations on use of chloride containing materials in construction.

The second area of inquiry is also unreasonably overbroad and burdensome. As indicated in the opposition, a request relating to all "chloride containing materials in the construction industry" implicates hundreds, if not thousands, of materials used by a general contractor such as McCarthy. This case involves one specific material – a plaster skim coat called PlasterMax manufactured by GigaCrete. Allianz fails to establish the propriety of discovery requests that are not reasonably tailored to the issues in this litigation, particularly in light of the burden incumbent in responding.

Allianz' request for sanctions is denied.

7. S-CV-0032859 Reeve-Knight Construction, Inc. vs. Airco Mechanical, et al

The Motion for Summary Judgment is continued to April 7, 2015 at 8:30 a.m. in Department 40.

8. S-CV-0033463 House, Stephen Michael, et al vs. Whittle, Joseph, et al

The Motion for Terminating Sanctions is dropped. No moving papers were filed.

9. S-CV-0034010 Beadle, Marva vs. Allied Trustee Services, et al

This tentative ruling is issued by the Honorable Mark S. Curry. If oral argument is requested, it shall be heard on March 3, 2015 at 8:30 a.m. in Department 32.

Defendant Sutter Capital Group, LP's (Sutter's) request for judicial notice is granted.

Sutter's Demurrer to Second Amended Complaint is sustained without leave to amend.

A party may demur to a complaint where the pleading fails to state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations of the complaint are deemed true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. The complaint must be “liberally construed, with a view to substantial justice between the parties.” Code Civ. Proc. § 452. If the complaint pleads facts entitling the plaintiff to relief, erroneous labels should be ignored. *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.

As a preliminary matter, Sutter properly demurs to plaintiff’s first cause of action to set aside trustee’s sale, second cause of action to cancel trustee’s deed, third cause of action to quiet title, sixth cause of action for elder abuse, seventh cause of action for “replication and scenario” and eighth cause of action for “improper bifurcation”. Sutter did not demur to plaintiff’s fourth cause of action for accounting or fifth cause of action for injunction. While Sutter’s notice of demurrer states that it demurs to “each cause of action”, Sutter neither sets forth the grounds for demurring to each cause of action in separate paragraphs (Cal. R. Ct., rule 3.1320(a)), nor discusses either of these claims in its memorandum of points and authorities.

Plaintiff’s first cause of action to set aside trustee’s sale, second cause of action to cancel trustee’s deed, and third cause of action to quiet title, fail to allege facts sufficient to state valid causes of action. The complaint fails to allege facts to establish that Sutter, the purchaser of the property at the trustee’s sale, was not a bona fide purchaser for value. *See Moeller v. Lien* (1994) 25 Cal.App.4th 822; Civ. Code § 2924(c).

Plaintiff’s sixth cause of action for elder abuse fails to allege facts sufficient to state a valid cause of action against Sutter. Plaintiff alleges no facts supporting the contention that Sutter took, secreted, appropriated, obtained or retained plaintiff’s property by undue influence, for wrongful use, or with the intent to defraud.

Plaintiff’s seventh cause of action for “replication and scenario” and eighth cause of action for “inappropriate bifurcation” fail to allege facts sufficient to state valid causes of action against Sutter. Upon examination, it does not appear that either claim actually refers to the invasion of a primary right of plaintiff. Moreover, neither claim alleges any facts relating to any harm caused by Sutter.

Plaintiff was previously given leave to amend to attempt to state valid claims, but has failed to do so. With respect to the instant demurrer, plaintiff filed a document one day prior to the originally scheduled hearing date which set forth additional allegations and requested leave to amend. This document was untimely, still does not allege any facts to support the contention that Sutter was not a bona fide purchaser for value, and does not address other defects identified in this ruling. As it is apparent that after multiple opportunities plaintiff cannot amend her complaint to properly allege the subject claims, the demurrer is sustained without leave to amend as to plaintiff’s first, second, third, sixth, seventh and eighth causes of action.

Sutter shall file and serve its answer to the second amended complaint by no later than March 20, 2015.

10. S-CV-0034057 Le, Thanh vs. Sushi Unlimited LLC

The motion by Hardy Erich Brown & Wilson to be relieved as counsel for defendants Sushi Unlimited, LLC and John Kim is granted, effective upon the filing of proof of service of the signed order upon defendants and all parties who have appeared in this action.

11. S-CV-0034421 McGovern, Chris, et al vs. Sugar Bowl Corporation

Defendant's Motion to Compel Responses to Document Requests and Deposition Testimony is denied.

A plaintiff does not automatically waive the privilege against disclosure of income tax returns, even in a personal injury action where the plaintiff claims lost income as a result of his or her injuries. *Brown v. Superior Court* (1977) 71 Cal.App.3d 141, 142-143. Such a privilege would not apply to underlying records and data upon which the tax returns were based, and plaintiff's counsel represents that following the filing of this motion, plaintiff produced over 2,500 pages of financial documents which will establish the basis of plaintiff's claim for lost income. A potential waiver of the privilege by tender of income might be inferred if plaintiff refused to produce any other substantial evidence on this issue. *See, e.g., King v. Mobile Home Rent Review Board of County of San Luis Obispo* (1989) 216 Cal.App.3d 1532, 1538-1539. However, in light of plaintiff's recent production of documents, defendant has not established that there exists no other means to determine plaintiff's income.

Plaintiff's objections to the subject discovery requests are supported, and the responses are otherwise appropriate. Defendant's request for sanctions is denied.

12. S-CV-0034571 David, Edgar P., et al vs. Rolling Greens Estates, LLC, et al

Plaintiffs and cross-defendants Edgar and Marina David's (the Davids') request for judicial notice is granted.

The Davids' Motion for a Title Report is granted. Upon motion of any party, the court shall make such orders as appear appropriate, including requiring the plaintiff to procure a title report and designate a place where it shall be kept for inspection, use, and copying by the parties. Code Civ. Proc. § 762.040(b). In the interest of identifying all parties with an interest in the property at issue in this action, a title report is appropriate.

The Davids' Demurrer to First Amended Cross-Complaint is sustained in part, and overruled in part. The demurrer is sustained on the grounds that the first amended cross-complaint (FACC) fails to join indispensable parties. The title report will reveal those parties which have continuing recorded interests in the subject property, which parties should be joined in this action as cross-defendants for purposes of cross-complainant Rolling Greens Estates, LLC's (Rolling Greens') quiet title claims.

The demurrer is sustained as to Rolling Greens' second and third causes of action for reformation of instrument on the grounds of mistake, and quiet title to easement as reformed. The statute of limitations for reformation claims based on mistake is three years. *Welsher v. Glickman* (1969) 272 Cal.App.2d 134, 140. While Rolling Greens asserts delayed discovery, it fails to plead facts showing ““(1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence.”” *E-Fab, Inc. v. Accountants, Inc. Svcs.* (2007) 153 Cal.App.4th 1308, 1324. Conclusory allegations are insufficient to withstand demurrer. *Id.*

The demurrer is otherwise overruled. The FACC by its allegations does not appear to seek fee simple title in the disputed property, but rather easement rights which are adverse to the Davids' claims. Rolling Greens' eleventh cause of action for fraud adequately alleges the elements of a claim for fraud based on nondisclosure, which include: ““(1) Nondisclosure by the defendant of facts materially affecting the value or desirability of the property; (2) Defendant's knowledge of such facts and of their being unknown to or beyond the reach of the plaintiff; (3) Defendant's intention to induce action by the plaintiff; (4) Inducement of the plaintiff to act by reason of the nondisclosure; and (5) Resulting damages.”” *Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 738.

Rolling Greens' claims for breach of contract and breach of the implied covenant of good faith and fair dealing are adequately pled. The subject agreement, attached as Exhibit D to the FACC, is ambiguous regarding the parties that bound thereby. Although titled an agreement between Elliott Homes, Inc. and the Davids, it is signed by Harry C. Elliott, III both as president of Elliott Homes, Inc. and “owner” of Rolling Greens Estates, LLC. The terms of the agreement itself do not designate or identify the parties, instead referring to “the property owners”. In light of the ambiguities present in the contract, Rolling Greens' interpretation must be accepted as correct in testing the sufficiency of the FACC. *Aragon-Haas v. Family Security Ins. Svcs., Inc.* (1991) 231 Cal.App.3d 232, 239.

The Davids' Motion to Strike is granted. The allegations of the FACC do not support Rolling Greens' prayer for attorneys' fees. Rolling Greens references sanctions pursuant to Code of Civil Procedure section 2033.420, which relate only to the failure to admit the truth of any matter in response to requests for admission. There is no indication that this statute has any current applicability to the allegations of the FACC.

Rolling Greens is granted leave to amend. Any amended cross-complaint shall be filed and served by no later than April 3, 2015.

13. S-CV-0034705 Kaniu, Sam, et al vs. EMC Mortgage Corp., et al

Defendants JP Morgan Chase Bank, N.A., EMC Mortgage Corporation and California Reconveyance Company's request for judicial notice is granted.

Defendants' Demurrer to First Amended Complaint is sustained without leave to amend.

Plaintiffs' first cause of action for breach of contract – loan modification fails to state a valid claim against defendants. According to the allegations of the first amended complaint, the HAMP Trial Plan Agreement was received from defendant EMC Mortgage Corp. (“EMC”) in March 2009, and plaintiffs were informed of a denial of a permanent loan modification on the same terms by EMC in March 2010. Subsequent to the denial, plaintiffs allege that defendants suggested or offered other trial plan modifications or permanent modifications on different terms, and that plaintiffs submitted numerous loan modification applications. Plaintiffs allege that certain representatives of EMC subsequently promised to try to get plaintiffs the “correct” loan modification despite the denial. Plaintiffs also allege that they followed instructions of EMC by ceasing their monthly payments in order to receive a different modification on better terms. However, based on the allegations of the second amended complaint, plaintiffs knew as of March 2010 that EMC had denied the loan modification based on the terms set forth in the Trial Plan Agreement. Accordingly, this cause of action is barred by the statute of limitations, as this action was not filed until June 4, 2014, more than four years after the alleged breach.

Plaintiffs' second cause of action for breach of contract – short sale agreement fails to state a valid claim against defendants. Plaintiffs fail to attach a copy of the purported contract, or set forth its terms verbatim. *Wise v. Southern Pacific Co.* (1963) 223 Cal.App.2d 50, 59. Plaintiffs fail to allege any of the alleged terms of the purported short sale agreement.

Plaintiffs' third cause of action for promissory estoppel fails to state a valid claim against defendants. Plaintiffs fail to allege a promise that is clear and unambiguous on its terms. *Laks v. Coast Fed. Sav. & Loan Ass'n* (1976) 60 Cal.App.3d 885, 890.

Plaintiffs' fourth cause of action for wrongful foreclosure fails to state a valid claim against defendants. Plaintiffs' assertion that they were not actually in default because EMC wrongfully denied them a permanent loan modification does not establish a breach of this provision. Plaintiffs admit that they stopped making payments on their loan, which would constitute an actual breach of their obligations under the note. This claim is also based on the facts underlying the first, second and third causes of action stated in the first amended complaint. However, none of these causes of action are adequately pled, nor do the allegations provide a basis to assert a claim for wrongful foreclosure.

Plaintiffs' fifth cause of action for fraud fails to state a valid claim against defendants. Plaintiffs allege several conflicting representations (e.g., that they would receive a different loan modification if they stopped making mortgage payments, that they should apply for a new loan modification, or that they would receive the “correct” modification), and do not make clear which of the conflicting representations they relied on. Plaintiffs fail to specifically allege justifiable reliance. *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 976. “[S]pecific pleading is necessary to ‘establish a complete causal relationship’ between the alleged misrepresentations and the harm claimed to have resulted therefrom.” *Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1092.

Plaintiffs' sixth cause of action for violation of Business and Professions Code sections 17200 *et seq.* fails to state a valid claim against defendants. This claim is based on plaintiffs'

other claims for breach of contract and fraud, none of which are adequately alleged. It is not clear what business practices are sought to be enjoined.

The court presumes that the facts alleged in the second amended complaint state the strongest case for plaintiffs. *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1286. Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiffs that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The second amended complaint does not suggest on its face that it is somehow capable of amendment and plaintiffs have failed to make any showing that the first amended complaint can be amended to change its legal effect. Accordingly, the demurrer is sustained without leave to amend.

14. S-CV-0034809 Dept. of Fair Employment/Housing vs. Awad, Majdi, et al

Defendants' request for judicial notice is granted. Defendants' Motion to Compel Further Responses to Requests for Production of Documents and Production is granted in part.

As narrowed by defendants' reply brief following supplemental responses and production of a privilege log by plaintiff Department of Fair Employment and Housing (DFEH), defendants demand production of transcripts from interviews which were prepared by a court reporter, and items identified in the privilege log Item Nos. 2-7, 9-11 and 13-15. Defendants also demand an amended privilege log which offers further facts to support the privileges asserted with respect to Item Nos. 1 and 8.

Defendants' request for an amended privilege log is denied. DFEH sufficient identifies Item Nos. 1 and 8 as "attorney notes and impressions" authored by staff counsel and associate chief counsel, which are properly subject to attorney work product protection. Code Civ. Proc. § 2018.030.

Defendants' demand for production of Item Nos. 3, 10, 11, 13, 14 and 15 is granted. These items are identified as communications by and between real party in interest Sandra Tompkins (Tompkins) and DFEH "staff members" or counsel. DFEH contends that these communications are protected by the attorney-client privilege and/or attorney work product protection. DFEH admits that there is no California authority applying the attorney-client privilege to communications between DFEH and real parties in interest such as Tompkins, but urges the court to apply the reasoning adopted by federal court decisions with respect to the EEOC and HUD, which have found a "de facto" attorney-client relationship in such situations.

The court declines to adopt the reasoning of the federal court decisions cited by DFEH in other contexts. In California, the attorney-client privilege is governed by statute, and the court may not create new privileges as a matter of judicial policy. *OXY Resources Cal. LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 888. The privilege applies only to communications by a person consulting with a lawyer in the lawyer's professional capacity, for the purpose of securing legal service or advice. Evid. Code § 951. In opposition to defendants' motion,

Tompkins submits a declaration stating that she filed a complaint with DFEH because she “wanted DFEH to pursue a claim for illegal discrimination and sexual harassment on my behalf” and that she “always believed that what the DFEH attorneys and I discuss about my case and the information we exchange is confidential”. (Tompkins decl., ¶¶ 2, 4.) Tompkins does not declare that she contacted DFEH for the purpose of securing legal representation or advice, and it is clear that DFEH does not represent Tompkins in this action, nor has it ever represented her. DFEH’s own materials expressly inform the public that its role during investigation of complaints is to act as a “neutral fact-finder” and that it does not represent either the complainant or the respondent. Even if the complaint is forwarded to the legal division of the DFEH for litigation, DFEH makes clear that its attorneys represent “the Department, not the individual Complainant” and that its attorneys are “not the Complainant’s personal legal advisor”. (RJN, Exh. A.) Further, DFEH provides no basis from which the court could determine that attorney work product protection applies to the communications between Tompkins and the DFEH.

Defendants’ demand for production of Item Nos. 2, 4, 5, 6, 7 and 9 is denied. These items are identified as “attorney directed witness interview notes”. The authors are identified as “DFEH staff member”. The California Supreme Court has held that witness statements obtained as a result of an interview conducted by an attorney, or by an attorney’s agent at the attorney’s behest, are entitled to at least qualified work product protection. *Coito v. Superior Court* (2012) 54 Cal.4th 480, 497. Defendants bear the burden of establishing that denial of disclosure would unfairly prejudice them in preparing their claim or defense, or would result in an injustice. *Id.* at 500. In this case, defendants have not satisfied this burden.

Finally, defendants’ demand for production of investigative interview transcripts is granted. Code of Civil Procedure section 2025.570 applies to depositions taken under Civil Discovery Act provisions, and does not apply to the transcripts at issue. DFEH provides no authority to support its refusal to produce copies of the requested transcripts, which it admits are in its possession.

DFEH shall serve further documents identified in this ruling by no later than March 27, 2015. The court finds that DFEH opposed the motion with substantial justification and defendants’ request for sanctions is denied.

15. S-CV-0034849 Beutler Corporation vs. Mohamed, Joseph, Sr., et al

Defendant Roseville Civic Plaza LLC’s Motion for Relief From Default is granted. Defendant shall file and serve all parties to the action with its answer and cross-complaint by no later than March 20, 2015.

16. S-CV-0034889 Roberts, W. Bruce, et al vs. Smartcup, Inc.

Judgment creditors’ Motion for Assignment of Rights, Restraining Order and Turnover Order is granted.

Judgment creditors filed notice of entry of a sister-statement judgment with this court on August 11, 2014, and judgment debtor Smartcup, Inc. was personally served with such notice on

September 10, 2014. Judgment has been entered in the amount of \$82,374.25, and no part of the judgment has been paid in satisfaction. Judgment creditors seek an assignment of all rights to payments from patents identified in United States Patent Applications Publication No. 2013/016272 and No. 2013/0125761.

A judgment creditor may obtain assignment of payments due from a patent pursuant to Code of Civil Procedure section 708.510(a). Judgment debtor argues that the patents are subject to a pre-existing lien securing a promissory note in the amount of \$227,500, and attaches a promissory note and security agreement in favor of lender R.W. Wilson. Judgment debtor provides no other information regarding this promissory note, which by its terms required payment in full by August 14, 2014. In any event, assuming that R.W. Wilson's security interest in the subject patents was duly perfected, any prior, superior rights in the patents are not affected by an assignment order issued in favor of judgment creditors in this action. Code Civ. Proc. § 701.040.

All rights to payments from patents identified in United States Patent Applications Publication No. 2013/016272 and No. 2013/0125761 shall be assigned to judgment creditors. Code Civ. Proc. § 708.510. This assignment order shall not have priority over any security interests that attached prior to the date of this order. Code Civ. Proc. § 701.040(a). Judgment debtor is restrained from the sale, alienation, mortgage, lien, encumbrance, advancement, cashing or negotiation, or receipt or exploitation of any of the subject patent rights. Code Civ. Proc. § 708.520(a). Defendants are ordered to turn over any and all documentary evidence regarding ownership of the subject patent rights to the Placer County Sheriff's Office, Attn: Civil Division, 2929 Richardson Drive, Auburn, CA 95603 within 30 days of the date of this order. Code Civ. Proc. § 699.040(a).

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